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SIPDIS

WHITE HOUSE FOR USTR  
DEPARTMENT FOR EEB/IFD/OIA  
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TAGS: [OPIC](#) [KTDB](#) [USTR](#) [EINV](#) [ETRD](#) [EFIN](#) [ELAB](#) [PGOV](#) [AS](#)  
SUBJECT: AUSTRALIA: 2010 INVESTMENT CLIMATE STATEMENT

Note on Exchange Rate and Table of Contents

1. Throughout the 2010 Investment Climate Statement for Australia, we have used the exchange rate of A\$1 = US\$0.92, reflecting the most current rate as of January 2010. It should be noted, however, that the exchange rate fluctuated widely over 2009. Following is a table of contents meant to facilitate reading of this report:

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A. OPENNESS TO FOREIGN INVESTMENT  
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12. Australia's foreign investment policy, as set out in its general investment guidelines, is to "encourage foreign investment consistent with community interests." In recognition of the contribution that foreign investment has made and continues to make to the development of Australia, the general stance of policy is to welcome foreign investment, particularly from Australia's largest source of foreign capital: the United States.

13. America is also the largest direct investor in Australia, while Australia is the ninth largest source of foreign direct investment (FDI) for the U.S. In 2008, U.S. investment in Australia (A\$418 billion) was almost the same as Australian investment in the United States (A\$395 billion). U.S. FDI in Australia accounts for 24% of total foreign investment in the country and is concentrated largely in resources and energy, manufacturing, and the nonbank financial services sector.

A.1. Australia-United States FTA (AUSFTA)  
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14. The Australia-United States FTA (AUSFTA) entered into force on January 1, 2005. AUSFTA is a comprehensive agreement that covers goods, services, investment, financial services, government procurement, standards and technical regulations, telecommunications, competition-related matters, electronic commerce, intellectual property rights, labor and the environment. Qcommerce, intellectual property rights, labor and the environment. The agreement has guaranteed U.S. access to the Australian market

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and the gradual expansion of this access. Under the FTA, trade in goods and services as well as foreign direct investment continued to expand. More than 99% of U.S. exports of manufactured goods are now duty-free. The FTA will also eliminate tariffs within 10 years of entry into force on textiles. U.S. Trade Representative Ron Kirk met on 15 October 2009 with Australian Minister of Trade Simon Crean to review progress under the AUSFTA. This was the fourth implementation review of the agreement.

A.2. Other investment agreements  
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15. The Australian Government supports the negotiation of comprehensive Free Trade Agreements (FTAs) that are consistent with the World Trade Organization rules and guidelines and which complement and reinforce the multilateral trading system. Australia has FTAs with the United States, Thailand, Singapore, Chile, and has reached agreement on a multilateral one with New Zealand and the countries of the Association of Southeast Asian States (ASEAN), all of which contain chapters on investment. Australia also has a longstanding FTA with New Zealand called the CER (Closer Economic Relations). While this agreement does not contain a specific section on investment, both countries have undertaken significant liberalization of their investment regimes vis-à-vis the other party.

16. Australia signed a free trade agreement with the Association of Southeast Asian Nations and New Zealand, which became effective on 1 January 2010. AANZFTA is the largest FTA Australia has concluded. ASEAN and New Zealand together account for 21% of Australia's total trade in goods and services, which were worth A\$103 billion in 2007-08. ASEAN, as a group, is a larger trading partner for Australia than any single country, accounting for 17% (A\$81 billion) of Australia's goods and services trade in 2007-08.

17. The Singapore-Australia Free Trade Agreement (SAFTA), which became operational on 28 July 2003, eliminated most tariffs and increased market access for services. It also harmonized competition policy, government procurement, intellectual property, e-commerce, customs procedures and business travel. The Thailand-Australia FTA will provide for zero tariffs on virtually all goods by 1 January 2010. The Australia-Chile FTA will result in the immediate reduction of tariffs on 97% of goods currently traded. Tariffs on all existing merchandise trade between Australia and Chile will be eliminated by 2015.

18. Australia is currently negotiating agreements with the Gulf

Cooperation Council (GCC), Malaysia, ASEAN, China and Japan, all which are expected to contain undertakings relating to investment liberalization. Australia is participating in negotiations for a Trans-Pacific Partnership Agreement (TPP). The TPP will expand on the current Trans-Pacific Strategic Economic Partnership Agreement between Brunei Darussalam, Chile, New Zealand and Singapore, which entered into force in 2006. The United States and Peru have also announced their intent to join the TPP negotiations. In addition, Australia is involved in FTA talks with Malaysia and Korea and it has commenced an FTA Feasibility Study with both Indonesia and India. In August 2009, Australia began negotiations with the other QIndia. In August 2009, Australia began negotiations with the other members of the Pacific Forum towards a Pacific Agreement on Closer Economic Relations (PACER) Plus.

## B. POLICIES AFFECTING INVESTMENT

### B.1. Conversion and transfer policies

¶9. The Australian dollar is a fully convertible currency. The government does not maintain currency controls or limit remittance, loan or lease payments. Such payments are processed through standard commercial channels, without governmental interference or delay.

### B.2. Expropriation and compensation

¶10. Private property can be expropriated for public purposes in accordance with established principles of international law. Due process rights are well established and respected, and prompt, adequate and effective compensation is paid.

### B.3. Dispute settlement procedures

¶11. AUSFTA establishes a dispute settlement mechanism for disputes arising under the Agreement. In the first instance disputes are to be settled through consultation between the parties. Where these

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consultations are not effective in resolving the dispute, the Agreement provides for an arbitral panel to consider the matter. The dispute settlement mechanism provides for compensation for breaches of the agreement, which may include requiring the breach to be corrected, trade compensation to be provided, or monetary compensation in lieu of trade compensation. The FTA does not allow private investors to directly challenge government decisions; however, individual investors are able to raise concerns about their treatment by the Australian Government with the United States Government (or vice versa).

¶12. Property and contractual rights are enforced through the Australian court system, which is based on English Common Law. There have been no investment disputes involving foreign companies in recent years. Australia is a member of the International Center for the Settlement of Investment Disputes.

¶13. Australia has an established legal and court system for the conduct or supervision of litigation and arbitration, as well as alternate dispute processes. The traditional approach to commercial dispute resolution involves litigation, arbitration and more modern methods of alternative dispute resolution. Australia is a world leader in the development and provision of non-court dispute resolution mechanisms. It is a signatory to all the major international dispute resolution conventions and has organizations that provide international dispute resolution processes.

### B.4. Performance requirements

¶14. As a general rule, foreign firms establishing themselves in Australia are not subject to performance requirements and incentives.

## B.5. Policies on legal corporate status

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¶15. As a general rule, foreign firms establishing themselves in Australia are accorded national treatment. They do not have to seek government permission to establish and own businesses unless their proposed activity meets tests established in law and regulation that trigger notification/review by the Foreign Investment Review Board (FIRB). These FIRB requirements are a matter of public record and are available upon application to FIRB.

¶16. Firms may, if they wish, seek "naturalization" (conversion to full Australian status, as opposed to foreign status). To be naturalized, a firm must be at least 51% Australian-owned; its articles of association must provide that a majority of its board be Australian citizens; and it must reach an agreement with the Government regarding the exercise of voting powers in respect of the firm's business in Australia. The only practical advantage of naturalization is relief from the requirement that the FIRB be notified of proposed investment activities.

## B.6. Tax policy

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¶17. Taxation policy generally allows the efficient mobilization and allocation of investment, although there are a number of differences between the U.S. and Australian tax systems that have potential implications for business. Businesses are advised to seek counsel from accounting and law firms familiar with the tax policies of both countries.

¶18. The Australian Taxation Office and the Internal Revenue Service have a simultaneous audits agreement to investigate suspected non-compliance with tax laws of both countries. The U.S.-Australia Double Taxation Treaty affects business investment between the two countries. The Treaty, effective since 1983, applies to federal income tax of the U.S., excluding accumulated earnings tax, personal holding company tax and Australian income tax. Separate agreements apply to gift and estate taxes.

¶19. Australia and the United States revised the Treaty in September 2001 to provide a competitive tax treaty for companies located in Australia by reducing the rate of dividend withholding tax on U.S. subsidiaries and branches of Australian companies. The treaty revision also prevents double taxation of capital gains derived by U.S. residents from interests in Australian entities while retaining Australian taxation rights. The Controlled Foreign Corporation and

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Controlled Foreign Trusts legislation provides for taxing income that accrues to corporations or trusts, arranged after residency is established.

¶20. In 2006, Australia abolished capital gains tax on sales for foreign investors as long as the asset sold consisted of less than 50% real estate by value. This approach was adopted because of a generally accepted assumption that capital gains should be taxed in the domicile of the investor. In late 2009, the Australian Taxation Office sought to tax an apparent capital gain of a U.S. company as ordinary income, which is liable to be taxed at the corporate tax rate of 30%. This issue is evolving and therefore it is still too early to determine its impact on U.S. companies.

## B.7. Investment insurance

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¶20. Australia provides foreign investment insurance to its firms investing abroad through the Export Finance and Insurance Corporation (EFIC). The U.S. Overseas Private Investment Corporation (OPIC) does not extend coverage to Australia, which is not a high-risk or developing country.

## ¶C. FOREIGN INVESTMENT POLICIES

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¶21. Takeovers of domestic firms by foreign investors are rarely interfered with and are treated under the same guidelines as any other investment. Occasionally there are strong public reactions to foreign investment proposals, particularly from Chinese state companies, but these rarely involve U.S. companies. There are no prohibitions on overseas investment or capital repatriation.

#### C.1. Foreign Investment Review Board

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¶22. The Department of the Treasury regulates foreign investment through its Foreign Investment Review Board (FIRB), which screens investment proposals for conformity with Australian law and policy. Regulation of foreign investment is based on the Foreign Acquisitions and Takeovers Act, (FATA) 1975 and the Foreign Acquisitions and Takeovers Regulations 1989. A full statement of Australia's foreign investment policy can be found at: <http://www.firb.gov.au>.

¶23. The investment screening mechanism administered by the FIRB tracks foreign investment developments through a notification system. The FIRB examines specific proposals if certain criteria are present. Under the Free Trade Agreement between the U.S. and Australia (AUSFTA), which entered into force on January 1, 2005, U.S. investors are subject to separate and more generous investment criteria and thresholds.

¶24. Under the AUSFTA, Australia committed to further liberalization of its foreign investment regime as it applies to U.S. investors, while preserving the main feature of that regime, namely the ability to ensure that significant U.S. investment proposals are in the "national interest." The following changes to Australia's foreign investment policy were agreed under the AUSFTA:

- Exemption from the FATA of acquisitions in financial sector companies, as defined by the Financial Sector (Shareholdings) Act 1998.

- The operation of a screening threshold, indexed annually from 1 January (to the GDP implicit price deflator), of acquisitions in Australian businesses in non-sensitive sectors - for 2010, the threshold is A\$1,004 million (equivalent to US\$924 million). A requirement to notify the FIRB of plans to establish new businesses
- Requirement to notify the FIRB of plans to establish new businesses involving a total investment of over A\$10 million or more has been abolished.

- Another annually-indexed screening threshold for acquisitions of Australian businesses in defined sensitive sectors - the threshold for 2010 is A\$231 million (US\$213 million). The sensitive sectors are: media; telecommunications; transport (including airports, port facilities, rail infrastructure, international and domestic aviation and shipping services provided either within, or to and from, Australia); the supply of training or human resources, or the manufacture or supply of military goods or equipment or technology, to the Australian Defense Force or other defense forces; the manufacture or supply of goods, equipment or technology able to be used for a military purpose; the development, manufacture or supply of, or the provision of services relating to, encryption and security technologies and communications systems; and the extraction of (or holding of rights to extract) uranium or plutonium or the

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operation of nuclear facilities.

- A minimum screening threshold of A\$231 million (US\$213 million) for acquisitions by entities in which the United States Government has a prescribed interest.

- A screening threshold of A\$1,004 million (US\$924 million) for acquisitions in non-residential developed commercial property.

- Removal of existing policy-based screening requirements for the establishment of new Australian businesses, other than where the investment involves the United States Government.

¶25. The FIRB must be notified of investment proposals in the following categories:



-- Acquisitions of substantial interests (15% by a foreigner together with their associates or 40% in aggregate) in existing Australian businesses, the value of whose assets exceeds A\$231 million or where the proposal values the business at over A\$231 million. Under the AUSFTA, a notification threshold of A\$1,004 million applies to U.S. investors, except for investments in prescribed sensitive sectors.

-- Plans to establish new businesses by an entity controlled by the U.S. Government. Plans to establish new businesses by U.S. investors do not require notification, though they remain subject to other relevant policy requirements.

-- Portfolio investments in the media of 5% or more, and all non-portfolio investments irrespective of size.

-- Takeovers of offshore companies whose Australian subsidiaries are valued at A\$231 million (US\$213 million) or more, or the applicable U.S. investor threshold under the AUSFTA.

-- Direct investments by foreign governments or their agencies, irrespective of size.

-- Acquisitions of interests in urban land that involve:

-- Developed non-residential commercial real estate, where the property is subject to heritage listing, valued at A\$5 million or more.

-- Developed non-residential commercial real estate, where the property is not subject to heritage listing, valued at A\$50 million or more, or A\$1,004 million (indexed) for U.S. investors.

-- Vacant urban real estate regardless of value.

-- Residential real estate regardless of value.

-- Proposals where any doubt exists as to whether they are notifiable.

¶26. The FIRB uses a "national interest" test to examine foreign investment proposals. Proposals are evaluated according to their consistency with existing government policy and law, where these are taken to define important aspects of national interest (for example, competition policy and environmental laws). National security interests and economic development priorities are also considered. The Federal Treasurer, under the authority of the FATA, ultimately decides whether or not an investment is contrary to the national interest.

¶27. In the 2007-08 FIRB annual report (the latest available), 7,841 foreign investment proposals received approval, representing an increase of 27% over the previous year. The real estate sector recorded 7,357 approvals (31% higher than the 5,614 approvals in 2006-07). Proposals in other sectors numbered 484, a decrease of 11%.

¶28. 2007-08 approvals involved investment totaling A\$191.9 billion, a 23% increase on the previous year. The mineral exploration and development sector was the largest industry sector by value, with investment approvals of A\$64.3 billion (roughly doubling 2006-07's investment approvals of A\$32.3 billion). Other major sectors included: real estate, with approved investment proposals valued at A\$45.5 billion (A\$21.4 billion in 2006-07); services, with investment approvals of A\$35.7 billion (A\$28.9 billion in 2006-07); and manufacturing, with

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investment approvals of A\$31.3 billion (compared with A\$62.8 billion in 2006-07). The amount from disapproved investments was negligible.

¶29. The United States was again the largest source-country for foreign investment in 2007-08, totaling A\$49.5 billion and representing 26% of total investment approved. The United Kingdom,

Germany, Singapore and Switzerland were the other major source-countries of investment, with 17%, 7%, 6% and 5%, respectively.

## C.2. Sector-specific regulation

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### C.3. Media

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¶30. Australia's current media framework, which went into effect in 2007, relaxed foreign and cross-media ownership restrictions. Nevertheless, the media industry remains a sensitive sector. Cross-media ownership is subject to the safeguards that at least five independent voices remain in metropolitan markets and four in regional markets.

### C.4. Civil Aviation

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¶31. The Australian Government released its National Aviation Policy Statement, or White Paper, on 16 December 2009. The White Paper retains the basic limit of 49% foreign ownership (i.e. 25% for foreign individual shareholdings and 35% for total foreign airlines shareholdings).

¶32. The Government will consider more flexible arrangements for ownership of its airlines, other than Qantas, with governments with which Australia has negotiated Open Aviation Market agreements.

¶33. In relation to the domestic carrier market, foreign investors can generally expect approval to acquire up to 100% of a domestic carrier (other than Qantas), or establish a new domestic aviation operation, unless this is contrary to the national interest.

¶34. Airports: In relation to the airports offered for sale by the Australian Government, the Airports Act of 1996 stipulates a 49% foreign ownership limit, a 5% airline ownership limit, and cross-ownership limits between Sydney airport (including Sydney West) and Melbourne, Brisbane and Perth airports.

### C.5. Telecommunications

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¶35. Prior approval is required for foreign entry into the telecommunications sector or for investment in existing businesses in the sector. In 2006, the Government reduced its majority shareholding (51.8%) in the leading telecommunications company Telstra to around 18% following a successful share offer. The remaining 18% of shares was transferred to the Future Fund, a sovereign fund established 2006. Aggregate foreign ownership of Telstra is still restricted to 35% of the privatized equity and individual foreign investors are restricted to a maximum holding of 5%.

## ¶D. CHANGES IN FOREIGN INVESTMENT REGULATIONS

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### D.1. Real estate investment

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¶36. On December 18, 2008, the Australian government announced changes to foreign investment screening arrangements for acquisitions of residential real estate by foreign persons that streamlined notification and administrative arrangements. The main changes are:

-- Acquisitions by foreign-owned companies, trust estates and non-resident foreign persons of single blocks of vacant residential land are required to build a dwelling within a period of 24 months (previously within 12 months and development expenditure of at least 50% of land cost).

-- Provided that developers market locally as well as overseas, they are no longer limited by the requirement that only 50% of new dwellings could be sold to foreign persons on an "off the plan" basis.

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-- Foreign-owned companies can now purchase established dwellings

for the use of their Australian-based staff provided that they sell or rent the dwelling if it is expected to remain vacant for more than 6 months.

-- Foreign students resident in Australia are no longer subject to a A\$300,000 (US\$276,000) limit on the value of an established dwelling purchased as their principal place of residence.

#### D.2. Investment thresholds

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¶37. The Government increased screening thresholds for foreign investment in order to incentivize foreign overseas investors to Australia. These changes are reflected above in section B (Foreign Investment Review Board).

#### D.3. FATA proposed amendment

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¶38. On August 22, 2009, the Government announced the Foreign Acquisitions and Takeovers Amendment (FATA) Bill 2009, which would allow the government to properly examine innovative and complex financing arrangements. The change will require foreign investors to notify the Government where there is a possibility that the type of arrangement being used will deliver influence or control over an Australian company, either currently or at some time in the future. The amendments specifically include transactions, agreements or arrangements that include debt instruments having quasi-equity characteristics. The amendments are intended to apply from February 12, 2009.

#### ¶E. INCENTIVES FOR INVESTMENT

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¶39. Hundreds of major foreign firms in most industry sectors invest in Australia. The Australian Federal and State Governments offer incentives to multinationals to establish operations in Australia and benefit from Australia's: safe and stable business environment; lower facility site and operating costs in comparison to other regional centers, such as Singapore, Hong Kong and Taiwan; and skilled workforce. For more information see <http://www.ausindustry.gov.au>. Incentives that are available to investors include:

-- Research and development tax concessions for companies incorporated in Australia allow companies to deduct up to 125% of eligible expenditure incurred on R&D activities. For expenditures that qualify for the 125% concession (excluding plant-related expenditures), an additional 50% deduction, called the "175% premium R&D tax concession," is available to companies that increase their average R&D expenditures, compared to the previous 3 years.

-- The Pharmaceuticals Partnerships Program (P3) offers R&D incentive grants to established companies in the pharmaceutical sector. Grants consist of payment of 30 cents per dollar spent on eligible increased R&D activities in Australia above a base level of activity.

-- Venture capital tax concessions: Capital gains tax exemptions are available for non-resident investment in Australian venture capital. The exemptions apply to investors from the U.S., the U.K., Japan, Germany, France and Canada.

-- The Invest Australia Supported Skills (IASS) program is designed to encourage international firms to choose Australia as a location for direct investment by providing streamlined immigration arrangements for eligible employees of a company that is considering making a significant or strategic investment in Australia. Qmaking a significant or strategic investment in Australia.

-- The Green Car Innovation Fund (GCIF) is part of the Government's "A New Car Plan for a Greener Future" program and provides assistance over ten years, beginning 2009-10, to design, develop and manufacture low-emission, fuel-efficient cars and components in Australia. The A\$1.3 billion (US\$1.2 billion) fund provides assistance to Australian companies for projects that enhance the



research, development and commercialization of Australian technologies that significantly reduce fuel consumption and/or greenhouse gas emissions of passenger motor vehicles. Grants are

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provided at a ratio of A\$1 of government funding for every A\$3 of eligible expenditure contributed by the grantee.

-- The Tradex Scheme allows an importer to gain an up-front exemption from Customs duty and GST on imported goods that are intended for export or to be used as inputs to exports. The goods may be exported in the same condition as imported, subjected to a process or treatment after importation, then exported or incorporated in other goods which are exported. Export may be carried out by the importer or a third party. The goods must be exported within 12 months of importation, although approval can be sought to extend this period.

-- The Retooling for Climate Change program is aimed at helping manufacturers improve their production processes, reduce energy use and cut carbon emissions. Through the program, grants will be available for initiatives such as investment in energy efficient tools, small-scale co-generation plants and water recycling.

## F. CAPITAL MARKETS

### F.1. Financial system

¶40. Australia has a well-developed, deep and sophisticated financial market, regulated in accordance with international norms. In terms of global turnover, Australia's foreign exchange market is the seventh largest in the world, and the Australian dollar/U.S. dollar is the fourth most traded currency pair globally (BIS, Triennial Central Bank Survey in 2007). Australia's financial system was one of the most resilient throughout the Global Financial Crisis and its four leading banks are currently ranked in the top 12 in the world in terms of financial security and AA rankings.

¶41. The Australian stock exchange is the 12th largest in the world and the Australian dollar is the world's 6th most traded currency. The market capitalization of shares of domestic companies on the Australian Stock Exchange (ASX) was about US\$ 700 billion, the fourth largest in the Asia-Pacific region. Australia has the third highest number of listed domestic companies in the Asia-Pacific, more than the combined total of Hong Kong SAR and Singapore stock exchanges. The stock and commodities exchanges have corresponding arrangements with other world exchanges. Credit is allocated on market terms and several foreign banks operate successfully in Australia.

¶42. Australia's financial services sector had assets of more than A\$4.3 trillion (USD 4.0 trillion) in mid-2008, almost four times GDP. Australia has one of the largest pools of contestable funds under management globally, valued at about A\$1.3 trillion (USD 1.2 trillion) in mid-2008. The Government passed legislation which will progressively reduce the withholding tax rate on specified distributions from managed funds from 30% to 7.5% by 2010-2011, making it one of the most competitive in the world.

¶43. Private enterprises are generally allowed to compete with public enterprises under the same terms and conditions with respect to markets, credit and other business operations, such as licenses and supplies. Public enterprises are not generally accorded material advantages in Australia. Almost all former state-owned enterprises (SOEs) have been privatized.

### F.2. Sovereign wealth fund

¶44. Australia has one sovereign wealth fund, the Future Fund, which was established by the Future Fund Act 2006 to assist future Australian governments meet the cost of public sector superannuation liabilities by delivering investment returns on contributions to the Fund. Investment of the Future Fund is the responsibility of the Future Fund Board of Guardians with the support of the Future Fund Management Agency.

¶45. The Board and Agency also invest the assets of the Building Australia Fund, the Education Investment Fund and the Health and Hospitals Fund which were established by the Nation-building Funds

Act 2008. At end-September 2009, the Future Fund had assets of A\$64.25 billion (includes Telstra shares valued at \$4.3 billion). There is no regulation prescribing the proportion of the Future Fund's assets which must be invested in Australia or offshore. The Future Fund intends to gradually increase its foreign exposure, but most funds are currently invested in Australia.

#### G. GOVERNMENT PROCUREMENT

##### G.1. Preferences for local industry development

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¶46. Australia has not signed the GATT/WTO Agreement on Government Procurement, which means that it is not bound by conditions prohibiting specification of locally made product in tenders. However, the Australian Government procurement policy framework is non-discriminatory. That is, potential suppliers will not be discriminated against on the basis of their degree of foreign affiliation.

¶47. AUSFTA prohibits the use of local preference arrangements and offsets, except in certain circumstances. Notable exceptions to the rule include preferences applying to local small to medium sized enterprises (SMEs). At the Federal level, there is a minimum target of 10% SME participation in all government procurements. Non-discriminatory treatment applies to most central government departments and 33 central government enterprises. A number of items, mainly relating to military equipment procurement by the Australian Department of Defense, have been exempted from the Agreement.

¶48. The non-discrimination principle applies above certain thresholds. For Federal government procurement, the thresholds are A\$85,000 (US\$78,200) for goods and services and A\$9.51 million (US\$8.7 million) for construction services. For State government entities, the thresholds are A\$675,000 (US\$621,000) for goods and services and A\$9.51 million (US\$8.7 million) for construction services.

¶49. In July 2009, the Government released the "Boosting Australian Industry Participation" policy that requires tenderers for government work to outline their use of Australian suppliers in every bid. The policy directs all tenderers to declare their suppliers, whether local or overseas. The policy has not adversely affected U.S. firms.

¶50. State governments operate their own government procurement schemes. Changes to the Victorian Industry Participation Policy (VIPPP) were introduced from July 1, 2009 to encourage greater local content in procurement. Major projects can be deemed of strategic significance to the Victorian economy when their estimated project capital cost exceeds \$100 million or whole-of-life costs exceed \$250 million. The policy has not adversely affected U.S. firms.

¶51. In June 2009, the government of New South Wales introduced measures giving local industry preference in major projects. The Local Jobs First plan requires government agencies and state-owned corporations to give preferential treatment to Australian-made goods. The price preference means locally-made content is discounted by 20% compared to overseas-sourced material in tender evaluations. Previously, a price preference applied only to businesses with up to 200 workers. It has now been extended to businesses with up to 500 workers. Every tender over A\$4 million also requires a local industry participation plan. Australia has assured the United States that this policy would be applied consistent with Australia's obligations under the FTA. This policy has not adversely affected U.S. firms.

##### G.2. Government IT procurement

¶52. The Information and Communications Technology (ICT) Management Consultants multi use list (ICT MUL) was established to enable Australian Government agencies to improve the quality of their ICT business case development and benchmarking, corporate governance, and ICT project management and delivery. A Multi-Use List (MUL) is a list of pre-qualified potential suppliers of nominated goods and/or services, who have satisfied the conditions for inclusion. A

MUL is a procurement tool available under the Australian Procurement Guidelines and is intended for use in more than one procurement process. Government departments and agencies can require inclusion on an MUL as a condition for participation in an open tender or as the basis for selecting participants in a select tender process for nominated goods or services. Inclusion on an MUL does not guarantee any potential supplier that an agency will include them in a select tender process.

153. For ICT contracts of A\$20 million (US\$18.4 million) and above, Australian Government agencies subject to the Financial Management and Accountability Act 1997 (FMA Act) must include a minimum target level for SME participation ranging between 10-20% of the contract value, depending on the proportion of hardware and software/services (10% for hardware, 20% for software/services). This policy supplements the Commonwealth Procurement Guidelines target of a minimum 10% SME spend generally. Any SME participation stemming from ICT contracts of A\$20 million and above will count towards the achievement of the agency-wide 10% target. All publicly available business opportunities relating to the central government are notified on the AusTender website. Businesses can register their

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interest profile on the site and will receive automatic notification of the latest opportunities. See the AusTender website for more information (<https://www.tenders.gov.au/federal/index.shtml>).

#### H. PROTECTION OF INTELLECTUAL PROPERTY

154. Australia generally provides strong IPR protection and enforcement and has been an active participant in efforts to strengthen international IPR enforcement through negotiating an Anti-Counterfeiting Trade Agreement (ACTA). Australia is a member of the World Intellectual Property Organization (WIPO) and is a member of a number of intellectual property treaties. These include the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Universal Copyright Convention, the Geneva Phonogram Convention, the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations, the Patent Cooperation Treaty, the Madrid Protocol, the Patent Law Treaty, the Singapore Treaty on the Law of Trademarks, the WIPO Copyright Treaty 1996 (WCT), and the WIPO Performances and Phonograms Treaty 1996 (WPPT). The treaties protect copyright in the online environment. In September 2008, an Australian, Dr Francis Gurry, was elected as Director General of WIPO.

155. IP Australia is the Australian government agency responsible for registration of patents, trademarks and designs and plant breeder's rights. See <http://www.ipaustralia.gov.au/>.

##### H.1. Patents, Trade Secrets, Designs

156. Patents are available for inventions in all fields of technology and are the principal system for protecting ownership of any device, substance, method or process that is new or inventive. They are protected by the Patents Act of 1990, which offers coverage for 20 years, subject to renewal. An application for patent in Australia provides international priority rights if applications follow in overseas jurisdictions within 12 months.

157. In 2006, legislation aimed at preventing unauthorized access to material protected by copyright was passed by the Australian Parliament. The legislation implemented the technological protection measures (TPMs) scheme in the AUSFTA. TPMs are technical locks, such as passwords or encryption, used by copyright owners to prevent unauthorized access to and use of their material. These laws complement other copyright reforms including measures to target piracy.

158. Under the AUSFTA, the Australian government agreed to provide measures to prevent the marketing of a generic version of a pharmaceutical before the patent on that product expired. Australian regulations provide five years of protection of test data submitted to regulatory authorities for marketing approval of new

pharmaceutical products and ten years of protection to undisclosed data submitted with an application for marketing approval for a new agricultural product, when that approval is given in combination with the marketing approval of certain additional uses of the same product.

¶59. Design features, such as shape or pattern, can be protected from imitation by registration under the Designs Act of 1906 for up to 16 years. An important aspect of a design is that it must be applied industrially. Registration cannot be granted for a design that is purely artistic. Only the owner of the design can make an application for registration.

## H.2. Recent IPR developments

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¶60. In April 2008, IP Australia and the US Patent and Trademark Office (USPTO) entered into a pilot of a cooperation initiative called the Patent Prosecution Highway (PPH). The program aims for faster patent examination times for patent applicants with interests and applications in the US and Australia. Under the PPH, an applicant receiving a report from either the USPTO or IP Australia with at least one patentable claim in an application may request that the other office accelerate the examination of the corresponding application. The applicant benefits from the patent office of one country using the work previously conducted by the other office, by obtaining corresponding patents faster and more efficiently. Details of the program can be found at [http://www.uspto.gov/web/patents/pph/pph\\_ipau.html](http://www.uspto.gov/web/patents/pph/pph_ipau.html).

¶61. In July 2008, IP Australia and the United States' Patent and Trademark Office (USPTO) announced an arrangement which will see IP

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Australia act as an international search and examination authority for international applications filed with the USPTO under the Patent Cooperation Treaty (PCT).

## H.3. Trademarks

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¶62. Trademarks may be protected for ten years and renewed indefinitely, upon request by registration under the Trademarks Act of 1995. Once used, trademarks may also, without registration, be protected by common law; however registration with IP Australia does make enforcement easier. U.S. exporters can check with the Trademarks Office at IP Australia to ensure that their trademark is not already in use.

¶63. In 2008, Australia began a review of penalties and additional damages in its Trademark Act. An issues paper in February 2009 noted that penalties for trademark offenses are significantly lower than for copyright offenses (2 years compared to 5 years) and recommended that these penalties be brought into alignment.

## H.4. Copyrights

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¶64. Australia amended its Copyright Act in 2007, to include implementation of provisions concerning circumvention of technological protection measures used in connection with the exercise of copyright. This includes a key criminal offence obligation. Under the AUSFTA, criminal procedures and penalties apply in cases of willful copyright piracy on a commercial scale.

¶65. Copyrights are protected under the Copyright Act of 1968, which has been amended by the U.S. Free Trade Implementation Act 2004 and the Copyright Amendment Act 2004 and Copyright Amendment Act 2006, to meet the obligations of the U.S.-Australia Free Trade Agreement. Works do not require registration, and copyrights automatically subsist in original literary, artistic, musical and dramatic works, film and sound recordings. Copyright protection is for the life of the author plus 70 years. For sound recordings and films, protection is 70 years after publication.

¶66. The Australian Copyright Act provides protection and against video piracy and unauthorized third-country imports. Amendments to the original Copyright Act of 1968 contained in the Copyright Amendment Act 2006 are related to: time-shifting, format-shifting and space-shifting; certain non-commercial activities of libraries, educational institutions and cultural institutions; use of copyright by people with a disability; parody and satire; the Copyright Tribunal; technological protection measures; unauthorized reception of encoded broadcasts and criminal penalties.

## I. REGULATORY FRAMEWORK AND TRANSPARENCY

### I.1. Regulatory Framework

¶67. Australia's regulatory framework consists of the various regulatory authorities; the statutory regulatory requirements they administer; and the financial supervisory powers vested in those regulatory authorities. There are three central financial regulatory agencies with responsibility for maintaining the safety and soundness of Australian financial institutions, for protecting consumers, for ensuring market integrity, and for promoting systemic stability:

-- The Reserve Bank of Australia (RBA) has responsibility for the stability of the financial system as a whole, for monetary policy and for the payments system.

-- The Australian Prudential Regulation Authority (APRA) is responsible for prudential supervision of authorized deposit-taking institutions (ADIs), insurance companies and superannuation funds. APRA's major focus is on capital adequacy and on companies' internal risk monitoring and control mechanisms, with the objective of reducing the likelihood of institutional insolvency and consequential losses to depositors, policyholders and members. APRA currently supervises institutions holding approximately A\$3.4 trillion in assets.

-- The Australian Securities and Investments Commission (ASIC) is responsible for overseeing corporations and market integrity, including disclosure standards and consumer protection. ASIC regulates Australian companies, financial markets, financial services organizations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and consumer credit. ASIC is also responsible for registering and supervising the operation of managed investment schemes.

### I.2. Transparency

¶68. Australia subscribes to the 1976 declaration of the Organization for Economic Cooperation and Development (OECD) concerning International Investment and Multinational Enterprises. The

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instruments cover national treatment and investment incentives and disincentives, and spell-out voluntary guidelines for the conduct of multinational enterprises in member countries. Australia also subscribes to two OECD codes of liberalization, one covering capital movements and the other invisible transactions. Australia has a transparent regulatory system and ranked third in 2009 (behind Singapore and Hong Kong) in terms of 'economic freedom' as measured by the Heritage Foundation's rankings.

¶69. According to this measure, Australia ranks highly in the ten economic freedoms. The Heritage Foundation's survey found that: "Monetary stability and openness to global commerce buttress an internationally competitive financial and investment environment based on market principles. A strong rule of law protects property rights and tolerates virtually no corruption. Both foreign and domestically-owned businesses enjoy considerable flexibility in their licensing, regulation, and employment practices."

¶70. Australia's rankings in various international governance surveys are given below:

- Transparency International corruption rank: 8th in 2009
- Heritage Economic Freedom rank: 82.6 (third in 2009)
- World Bank Doing Business rank: ranked 9th in 2010
- Heritage government rank: 64.3
- Rule of Law rank: 90.0
- Control of Corruption rank: 87.0
- Fiscal Freedom rank: 61.4
- Trade Policy rank: 84.8
- Regulatory Quality rank: 90.3
- World Bank Business Start Up: ranked 3rd in 2010
- Heritage Property Rights rank: 90.0 (average 44.0)

### I.3. Corporate social responsibility (CSR)

¶71. In Australia, there is a general awareness of corporate social responsibility among both producers and consumers. Both foreign and local enterprises tend to follow generally accepted CSR principles



such as the OECD Guidelines for Multinational Enterprises. Firms that pursue CSR are often rated highly in surveys of corporate behavior.

#### I.4. Political violence

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¶72. As in all liberal democracies, political protests (e.g., rallies, demonstrations, marches, public conflicts between competing interests) form an integral, though generally minor, part of Australian cultural life. Such protests rarely degenerate into violence.

#### I.5. Corruption

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¶73. Australia maintains a thorough system of laws and regulations designed to counter corruption. In addition, the government procurement system generally is transparent and well regulated, thereby minimizing opportunities for corrupt dealings. Accordingly, corruption has not been a factor cited by U.S. businesses as a disincentive to investing in Australia, or to exporting goods and services here. Non-governmental organizations interested in monitoring the global development or anti-corruption measures, including Transparency International, operate freely in Australia. Australia is perceived internationally as having low corruption levels, as demonstrated by Transparency International's Corruption Perception Index 2009, which ranked Australia ninth, ahead of the U.K., Canada and the U.S. in terms of nations perceived as having low levels of corruption.

¶74. Australia is an active participant in international efforts to end the bribery of foreign officials. Legislation to give effect to the anti-bribery convention stemming from the OECD 1996 Ministerial Commitment to Criminalize Transnational Bribery was passed in 1999. Legislation explicitly disallowing tax deductions for bribes of foreign officials was enacted in May 2000. At the federal level, enforcement of anti-corruption laws and regulations is the responsibility of the Attorney General's Department.

#### ¶J. LABOR

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¶75. Australia's unemployment rate was 5.5% in December 2009, seasonally adjusted, up from 4.4% a year earlier. Unemployment was forecast by Treasury at 6.75% for mid-2010, but may have already peaked. Over the last 25 years, the labor market has become more flexible.

¶76. On January 1 2010, a new body, Fair Work Australia, took over the functions of other former industrial relations bodies, such as the Fair Pay Commission, which sets wages for the low paid, and the

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Industrial Relations Commission, which arbitrates industrial disputes. The new National Employment Standards replaced the Australian Fair Pay and Conditions Standards (AFPCS) on January 1, 2010. In 2010, a national award system of industry standards will replace the former system of state awards.

¶77. In the year to August 2009, annual average weekly earnings in Australia grew 5.3%, seasonally adjusted. The core inflation rate was 3.5% for the year to September 2009. Real wages have grown strongly over the last decade. In 2009, a mining boom gave rise to skills shortages in that sector, particularly in Western Australia.

¶78. In 2009, the government made changes to the uncapped visa program covering employer-sponsored temporary foreign workers (457 visa program). These included introducing a market based minimum salary for all new and existing 457 visa holders; developing minimum skills requirements that meet Australian standards; and increasing the minimum English language requirement.

¶79. Industrial disputation is low by historical standards. In the year ended September quarter 2009, 119 working days per thousand employees were lost due to strikes, compared to 190 during the previous year. Two hundred and two industrial disputes commenced during the year ended September 2008; compared to 169 during the previous year.

¶80. Other Federal laws set specific employment conditions. For instance, the Superannuation Guarantee (Administration) Act 1992 requires employers to contribute a minimum of 9% of each employee's

base salary into that employee's superannuation account; employees may make additional contributions and are entitled to choose their superannuation fund. For more information see (<http://www.ato.gov.au/super/default.asp>).

¶81. In 2001, the Government established the General Employees Entitlements Redundancy Scheme (GEERS), a taxpayer-funded insurance scheme, in response to growing community concerns about the loss of employee entitlements after several companies collapsed. GEER is a basic payment scheme established to assist employees who have lost their employment due to the liquidation or bankruptcy of their employer and who are owed certain employee entitlements. The scheme covers capped unpaid wages, annual and long service leave, capped payment in lieu of notice and capped redundancy pay. Employees currently stand ahead of unsecured creditors, but behind lenders with fixed security in the creditors' queue following a company collapse.

¶82. The Australian Government is nominally a party to all International Labor Organization (ILO) conventions.

#### ¶K. FOREIGN DIRECT INVESTMENT STATISTICS

##### K.1. Levels of foreign investment

¶83. The level of foreign investment in Australia increased by A\$66 billion (US\$61 billion) in 2008 to reach A\$1.72 trillion (US\$1.58 trillion). Portfolio investment accounted for A\$921 billion (US\$829 billion) (53%), direct investment for A\$393 billion (US\$362 billion) (23%), other investment liabilities for A\$303 billion (US\$279 billion) (17.6%) and financial derivatives for A\$108 billion (US\$99 billion) (6.3%). Of the portfolio investment liabilities, debt securities accounted for A\$689 billion (US\$634 billion) (40.0%) and Qsecurities accounted for A\$689 billion (US\$634 billion) (40.0%) and equity securities for A\$232 billion (US\$213 billion) (13.5%).

¶84. The leading investor countries in 2008 by level of investment were the United Kingdom, with A\$427 billion (US\$393 billion or 25%), the United States with A\$418 billion (US\$385 billion or 24.0%), Japan with A\$90 billion (US\$83 billion or 5%), Hong Kong SAR with A\$56 billion (US\$52 billion or 4%), the Netherlands with A\$38 billion (US\$35 billion or 2%) and Germany with A\$36 billion (US\$33 billion or 2%). Note: Australian foreign investment statistics are based on current market values.

¶85. Foreign direct investment (FDI) in Australia in 2008 was valued at A\$56 billion on a flow basis; and the level of FDI in 2008 was A\$393 billion. Australian GDP in 2008 was A\$1,192 billion, so that the ratio of FDI inflows to GDP in 2008 was 4.7%. The ratio of the stock of FDI to GDP in 2008 was 33.0%.

¶86. There is no official listing of major foreign investments by U.S. companies or other nations' companies. The Australian Bureau of Statistics collects this information, but does not release it on a disaggregated basis due to confidentiality provisions in its Act. A list of major new resources and energy projects, which often involve significant foreign investment, is compiled by the Australian Bureau of Agricultural and Resource Economics (ABARE).

##### K.2. Australian investment abroad

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¶87. The level of Australian investment abroad reached A\$1,011 billion (US\$930 billion) in 2008, an increase of A\$9 billion (US\$8.3 billion) on the previous year. Direct investment abroad accounted for A\$281 billion (US\$259 billion) (28%), portfolio investment for A\$373 billion (US\$343 billion) (37%), other investment for A\$196 billion (US\$180 billion) (19.4%), reserve assets for A\$47.5 billion (US\$43.7 billion) (4.7%) and financial derivatives for A\$113 billion (US\$104 billion) (11.2%). Equity has been the main form of Australian investment abroad during the past decade. At A\$608.0 billion (US\$559), equity represented 49% of the total level of investment in 2008.

¶88. The leading destination countries in 2008 were as follows. In 2008, the United States accounted for A\$395 billion (US\$363 billion) or 24.3% of the stock of Australian investment abroad. Other major countries of investment were the United Kingdom with A\$158 billion (US\$145 billion, 15.6%), New Zealand with A\$66 billion (US\$61

billion, 6.5%), Canada with A\$39 billion (US\$36 billion, or 3.9%), France with A\$35 billion (US\$32 billion, 3.5%) and the Netherlands with A\$30 billion (US\$28 billion or 3.0%). Source: Australian Bureau of Statistics.

### K.3. Investment inflows

189. Foreign investment in Australia recorded a net inflow of A\$149.0 billion (US\$137 billion) for 2008, a decrease of A\$11 billion (US\$10.1 billion) over the previous year. The leading investor countries were the United States - A\$27.0 billion (US\$24.8 billion) or 18.1%, the United Kingdom - A\$25.9 billion (US\$23.8 billion) or 17.4%, Germany - A\$14.6 billion (US\$13.4 billion) or 9.8%, Hong Kong - A\$11.4 billion (US\$10.5 billion) or 7.7% and Switzerland - A\$8.8 billion (US\$8.1 billion) or 5.9%.

### K.4. Outflows

190. Australian investment abroad recorded a net outflow of A\$100.8 billion (US\$92.7 billion) for 2008, a decrease of A\$6.7 billion (US\$6.2 billion). The leading destination countries were the United States - A\$53.3 billion (US\$49.0 billion or 52.9%, New Zealand - A\$14.5 billion (US\$13.3 billion) or 14.4%, Singapore- A\$8.0 billion (US\$7.4 billion) or 7.9% and Canada - A\$5.7 billion (US\$5.2 billion) or 5.6%. Portfolio divestment from Germany of A\$4.4 billion (US\$4.0 billion) occurred over 2008.

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